

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

...

WP (CrI)No. 280/2022

Pronounced on: 01.09.2023

**Abdul Rashid Dar, Aged 47 years
S/o Ghulam Mohammad Dar,
R/o Satoora Tehsil Aripal
District Pulwama
Through His Father
Ghulam Mohammad Dar Aged 75 years
F/o Abdul Rashid Dar,
R/o Satoora Tehsil Aripal
District Pulwama.**

...Petitioner(s)

Through:
Mr. G.N.Shaheen, Advocate.

Versus

1. **Union Territory of Jammu and Kashmir,
Through Principal Secretary,
Home Department, J&K Govt.,
Civil Sectt. Srinagar/Jammu.**
 2. **District Magistrate, Pulwama** ...Respondent(s)
- Through:
Mr. Rais-Ud-Din Ganai, Dy.A.G.

CORAM: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE.

JUDGMENT

1. The petitioner-Abdul Rashid Dar has challenged the detention order bearing No. 10/DMP/PSA/22 dated 07.04.2022 on the grounds that the grounds of detention have no nexus with the detenu, the allegations made are vague depriving the petitioner to make effective representation. The petitioner (detenu) has not been furnished the material while passing the detention order and finally that the last alleged activity against the detenu is of the year 2020 whereas the detention order has been passed in the year 2022 after a

period of two years meaning thereby that there is delayed execution and the proximity between the detention order and the object sought to be achieved by such order is not there. The detention order was earlier also passed against the petitioner and the writ petition WP(CrI) No. 182/2020 filed by the petitioner was allowed and the detention order dated 02.11.20220 was quashed. The grounds mentioned in the present detention order are similar and, therefore, cannot stand test of law. The petitioner was bailed out in the FIR which became the basis of passing of the earlier detention order, but the same does not found mention in the detention order under challenge in the present petition which speaks of the fact that the detention order has been passed in a casual manner.

2. The reply affidavit has been filed by the respondents wherein the respondent has justified the detention order passed by the respondents. The respondents have justified their action and submit that the detention order has been passed after fulfilling all the criteria required to pass such order. The post detention formalities have also been taken care of by the respondents is also stated in the reply. The order has been passed after recording necessary satisfaction, as such, the petition is liable to be dismissed.
3. Heard learned counsel for the parties and perused the record. Photo copy of the detention record is produced by the respondents.
4. The record of the disposed of writ petition WP (CrI) No. 182/2020 has also been annexed with the present file for perusal of the court.
5. The grounds of detention which resulted into passing of the detention order against the petitioner herein reveal of the FIR No. 40/2020 under Sections 7/25 Arms Act and UA (P) Act registered with Police Station, Tral and that the petitioner obtaining bail in the aforesaid FIR No. 40/2020 the petitioner after his release continued with the terrorist activities in a way that he influenced the youth to adopt path of terrorism and acting as informer for terrorists providing movement of security forces.

6. The perusal of the disposed of writ petition WP (Crl) No. 182/2020 reveals that the detention order which was subject matter of that writ petition also referred to the lodgment of FIR No. 40/2020 with the Police Station, Tral. The detention order, as stated above, passed on 02.11.2020 was quashed in the said petition by this Court.
7. The precise contention is that the grounds of detention which became the reason for passing of detention order in the year 2020 are again reflected in the detention order presently under challenge and that no other specific activity is attributed to the petitioner which could prompt the respondents to pass the detention order.
8. The argument of counsel for the respondents is that the nefarious activities of the petitioner stand out as a reason for passing of detention order. The Court is not in agreement with the submissions.
9. The Court after going through the detention order impugned herein is in agreement with the learned counsel for the petitioner. The grounds of detention as reflected in the year 2020 are primarily based upon the FIR No. 40/2020 which is again mentioned in the present detention order. The other activity referred to in the detention order is too vague, ambiguous and bereft of any detail whatsoever. Both the detention orders for all practical purposes are based upon the FIR No. 40/2020 and no more. There can be no two detention orders on the basis of same grounds.
10. The Hon'ble Supreme Court in AIR 1989 SC 1234 has held in principle that the subsequent detention order based on the grounds which echoed in the earlier detention order cannot be the basis for passing the second detention order.
11. The Court does not assess over the detention order as if it is deciding the detention in appeal. However, it does not mean that the court is totally debarred from looking into the detention order and if finds that the same is just a camouflage to keep the person in detention, the court has to intervene as the liberty of the detenu cannot be compromised.

12. The detention order invoked against the petitioner and impugned in the present petition is liable to be quashed on the aforesaid score only.
13. The Court need not go into other aspects of the challenge thrown in the petition in view of what has been observed above by the court.
14. Accordingly, the present petition is allowed and the order impugned dated 07.04.2022 is quashed. The petitioner is directed to be set at liberty forthwith provided he is not required in any other case.

(PUNEET GUPTA)
JUDGE

Srinagar:
01.09.2023
Pawan Chopra

